

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PURDUE PHARMA, L.P., *et. al.*,

Debtors

)
) **Chapter 11**
)

) **Case No. 19-23649 (RDD)**
)

) **(Jointly Administered)**
)

**BRIEF OF *AMICI CURIAE* THE KENNEDY FORUM, AMERICAN
FOUNDATION FOR SUICIDE PREVENTION, DEPRESSION AND BIPOLAR
SUPPORT ALLIANCE, INSEPARABLE, THE JED FOUNDATION, KENNEDY-SATCHER
CENTER FOR MENTAL HEALTH EQUITY, MENTAL HEALTH AMERICA, NATIONAL
ALLIANCE ON MENTAL ILLNESS, NATIONAL ASSOCIATION OF ADDICTION
TREATMENT PROVIDERS, NATIONAL ASSOCIATION FOR BEHAVIORAL
HEALTHCARE, NATIONAL COUNCIL FOR MENTAL WELLBEING, SCATTERGOOD
FOUNDATION, AND WELL BEING TRUST
IN SUPPORT OF THE REVISED FIFTH AMENDED PLAN AND
ITS INTENT THAT JURISDICTIONS USE DISTRIBUTIONS TO SUPPLEMENT RATHER
THAN SUPPLANT SPENDING TO ABATE THE OPIOID CRISIS**

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July 19, 2021

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CORPORATE DISCLOSURE STATEMENT

None of the *amici* has a parent corporation. No *amici* issues stock. Hence no publicly held corporation owns 10% or more of an *amici*'s stock.

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INTEREST OF *AMICI CURIAE*

*Amici*¹ have a strong interest in ensuring that the allocation of the Debtors' assets results
in "meaningful" reforms "to abate this [the opioid] crisis." Judge Dan Aaron Polster, *In Re:*
National Prescription Opiate Litigation, MDL No. 2804, No. 1:17-CV-2804 (N.D.Ohio
1/9/18)(Transcript at 411).

¹ No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than *amici* or their members or counsel contributed money that was intended to fund the brief's preparation or submission.

Amici are national, non-profit organizations dedicated to advancing behavioral health care and improving the lives of the millions of Americans affected by mental health and substance use disorders.

The Kennedy Forum, launched in celebration of the 50th anniversary of President Kennedy's signing of the landmark Community Mental Health Act, aims to achieve health equity by advancing evidence-based practices, policies and programming for the treatment of mental health and addiction. The Kennedy Forum is committed to providing leadership at all levels to unite the country around a common vision to improve the lives of individuals living with mental illness and addiction, and to promote behavioral health for all. A statement from former Congressman Patrick J. Kennedy concerning The Kennedy Forum and its vision is included herein as Appendix A.

The **American Foundation for Suicide Prevention** is dedicated to saving lives and bringing hope to those affected by suicide. In carrying out its mission, AFSP funds scientific research, educates the public about mental health and suicide prevention, advocates for public policies in mental health and suicide prevention, and supports survivors of suicide loss and those affected by suicide.

The **Depression and Bipolar Support Alliance** is the leading peer-focused mental health organization whose mission is "to improve the lives of people living with mood disorders." DBSA reaches over four million individuals with support, educational resources, and tools to help individuals living with mood disorders lead productive and fulfilling lives.

Inseparable is a growing coalition of people working to fundamentally improve mental health care policy in our country. Working with allied organizations across the political spectrum, Inseparable is focused on increasing access to life-saving care, investing in

prevention and early intervention in schools, and ending the criminalization of mental illness and addiction.

The Jed Foundation is a national nonprofit that exists to protect emotional health and prevent suicide for our nation's teens and young adults. It partners with high schools and colleges to strengthen their mental health, substance abuse and suicide prevention programming and systems. It equips teens and young adults with the skills and support to grow into healthy, thriving adults; and it encourages community awareness, understanding and action for young adult mental health.

The **Kennedy-Satcher Center for Mental Health Equity** in the Satcher Health Leadership Institute at Morehouse School of Medicine was jointly envisioned by the 16th U.S. Surgeon General, Dr. David Satcher, and former Congressman Patrick J. Kennedy. The Center works collaboratively toward equal treatment of mental health and substance use disorders by elevating parity, conducting research on mental health policy, and engaging stakeholders to advance mental and behavioral health equity.

Mental Health America is the nation's leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and promoting the overall mental health of all Americans. MHA has advocated throughout its history for access to effective mental-health services and support, without undue administrative barriers that prevent individuals from progressing in their recovery.

The **National Alliance on Mental Illness** is the nation's largest grassroots organization dedicated to building better lives for the millions of Americans affected by mental illness. NAMI advocates for access to services, treatment, support, and research, and is steadfast in its commitment to raising awareness and building a community of hope for individuals living with mental illness across the lifespan.

The **National Association of Addiction Treatment Providers** is a professional membership society of addiction service providers and supporters. The Mission of NAATP is to provide leadership, advocacy, training, and member support services to ensure the availability and highest quality of addiction treatment.

National Association for Behavioral Healthcare advocates for behavioral healthcare and represents provider systems that treat children, adolescents, adults, and older adults with mental health and substance use disorders in more than 1,800 inpatient behavioral healthcare hospitals and units, residential treatment facilities, partial hospitalization and intensive outpatient programs, medication assisted treatment centers, specialty behavioral healthcare programs, and recovery support services.

The **National Council for Mental Wellbeing** is the unifying voice of America's health care organizations that deliver mental health and substance use treatment and services. Together with its more than 3,500 member organizations serving over 10 million adults, children and families living with mental illnesses and addictions, the National Council is committed to all Americans having access to comprehensive, high-quality care that affords every opportunity for recovery.

The **Scattergood Foundation** believes major disruption is needed to build a stronger, more effective, compassionate, and inclusive society where behavioral health is central. The foundation: convenes thought leaders from behavioral health, philanthropy and advocacy organizations to make policy recommendations, delivers technical assistance and consultation to non-profits, and provides funding to mission-aligned organizations.

Well Being Trust is a national foundation focused on advancing the mental, social, spiritual health of the nation. Through its investments in clinical transformation, community,

policy and advocacy, and social engagement, Well Being Trust aims to decrease deaths of despair, those lives lost prematurely to drugs, alcohol, and suicide.

ARGUMENT

On April 20, 2020, the amici filed a brief in *In Re: National Prescription Opiate Litigation*, MDL No. 2804, No. 1:17-CV-2804 (N.D. Ohio 1/9/18) urging that the awards or settlement funds arising from opioid litigation be used to create meaningful reforms to abate the opioid crisis. In that brief, the amici proposed to use the historic opportunity provided by a settlement to address the opioid crisis by creating the behavioral health system that this country needs. While the revised Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors filed on June 3, 2021 (the “Revised Fifth Amended Plan”) does not seek to implement the proposal set forth in the brief, amici remain committed to maximizing the impact of the Revised Fifth Amended Plan in abating the opioid crisis.

Amici submit this brief to underscore the importance that the Debtors’ assets be used for “Authorized Abatement Purposes” as described in the Revised Fifth Amended Plan. In particular, the amici support the Revised Fifth Amended Plan’s intention that funds distributed from the National Opioid Abatement Trust (“NOAT”) be used for – and increase spending on – opioid use disorder services and co-occurring mental health and substance use disorder services. To effectuate this intent, it is important that funds distributed from the NOAT be used to supplement, not supplant, existing funding for such services, which would undermine the intent of the NOAT.

The possibility that jurisdictions may use distributions to supplant current spending is not theoretical. The State of New York has already done just this with funds it received from the opioid-related settlement between McKinsey & Company and attorneys general from 47 states and other jurisdictions. In New York’s enacted budget for fiscal year 2022, the majority

of the funds that the state received from the McKinsey settlement simply replaced existing state spending on addiction-related services – it did not increase it.² After widespread criticism from lawmakers, behavioral health advocates, and the public, the legislature passed legislation that created an Opioid Settlement Fund, which requires that funds received by New York from opioid-related litigation be segregated from other funds and used to “supplement and not supplant or replace any other funds, including federal or state funding, which would otherwise have been expended for substance use disorder prevention, treatment, recovery or harm reduction services or programs.” The legislation also requires that “general operating funds or baseline funding shall not be reduced due to monies expended from the [Opioid Settlement] fund.” While too late to affect how the McKinsey settlement funds were used, New York is now a leader in ensuring that settlement funds be used for appropriate purposes after Governor Andrew Cuomo signed the legislation into law on June 29, 2021.

Other states and local governments should put in place protections like those in New York. Without such protections, regardless of the clear intent in the Fifth Revised Amended Plan that funds be used to increase funding for behavioral health services, there is substantial danger that abatement funds will be used to supplant existing funding for services. Such supplantation might paradoxically result in leaving behavioral health services in future years worse off than if there had never been abatement funding at all. Governments may fail to restore behavioral health appropriations to previous levels when the NOAT funds are exhausted, with the result that funding for those services would fall below levels prior to the

² *Dem Senators Play Keepaway with Cuomo Settlement Funds*, The Post-Journal (May 29, 2021), <https://www.post-journal.com/news/local-news/2021/05/dem-senators-play-keepaway-with-cuomo-settlement-funds/>, and *Angered by Funds Sweep, Advocates Eye Lock Box Legislation*, Spectrum News Syracuse (April 20, 2021), <https://spectrumlocalnews.com/nys/central-ny/capital-tonight/2021/04/20/angered-by-funds-sweep--advocates-eye-lock-box-legislation>.

settlements, thus undermining the effort to use settlement funds to abate the harms of the opioid crisis.

The history of the tobacco settlement also shows that amici's concerns are not theoretical. Over \$169 billion of settlement funds were distributed to the 46 states and other jurisdictions between 1998 and 2020.³ However, little of this money was used to reduce tobacco use or its consequences. Less than 0.5% was used to support state tobacco prevention or cessation programs.⁴ On the whole, the funds have been used in politically expedient ways, including covering revenue shortfalls in jurisdictions' budgets.⁵ Over time, fewer and fewer settlement funds were devoted to tobacco-related activities.⁶ Without the appropriate protections, the same could occur with opioid settlement funds. It is critical that the use of NOAT funds not repeat this history.

CONCLUSION

Like the tobacco litigation of the 1990s, opioid litigation has exposed practices that caused injury and death on a massive scale. In distributing from the Debtors' estates, jurisdictions should heed the lesson of the tobacco settlement and put in place the protections necessary to ensure that settlement funds are used as the Revised Fifth Amended Plan contemplates.

Respectfully submitted,

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³ *Actual Annual Tobacco Settlement Payments Received by The States, 1998-2020*, Campaign for Tobacco-Free Kids, <https://www.tobaccofreekids.org/assets/factsheets/0365.pdf>.

⁴ *Id.*

⁵ See *The MSA – 20 Years Later*, National Association of Attorneys General (January 2, 2019), <https://www.naag.org/attorney-general-journal/tobacco-master-settlement-agreement-msa-20-years-later/>.

⁶ *Id.*

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